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MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP, Plaintiff, v. JOHN DUNLEA and NICOLE ALEXANDER, Defendants.	**SUPERIOR COURT OF NEW JERSEY LAW DIVISION: UNION COUNTY** **Docket No.:** ____________________ Civil Action **COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, McElroy, Deutsch, Mulvaney & Carpenter, LLP ("MDMC" or the "Firm"), through its undersigned attorneys, for its Complaint against Defendants, John Dunlea ("Dunlea") and Nicole Alexander ("Alexander"), alleges as follows:

NATURE OF THE ACTION

1. This is an action for compensatory and punitive damages, injunctive relief, a constructive trust, and attorneys' fees and costs against Dunlea, MDMC's former Chief Financial Officer/Chief Operating Officer ("CFO/COO"), and Alexander, the Firm's former Director of Professional and Business Development ("DPBD"), for misappropriation of more than $3.2 million of Firm funds over a period of more than ten years.

THE PARTIES

2. The Firm is, and at all times relevant to this Complaint has been, a limited liability partnership of the State of New Jersey with its principal place of business in the County of Morris.

3. Dunlea is, and at all times relevant to this Complaint has been, a resident of the State of New Jersey and the County of Union.

4. Alexander is, and at all times relevant to this Complaint has been, a resident of the State of New Jersey and the County of Union.

JURISDICTION AND VENUE

5. The Court has jurisdiction over this action because Defendants are residents of the State of New Jersey.

6. Venue is properly laid in this Court pursuant to New Jersey Court Rules 4:3-2(a)(1) and (3) because Defendants reside in the County of Union, and the real property that is the subject of Plaintiff's claim for a constructive trust is located in that county.

FACTUAL ALLEGATIONS

7. Dunlea began employment with the Firm on June 1, 2003, and became the Firm's CFO/COO on May 17, 2007. In that capacity, he reported directly to the Firm's Executive Committee, which comprises three attorneys and is responsible for the overall management of the Firm.

8. Alexander began employment with the Firm as an associate attorney in September 2000. Thereafter, at her suggestion, she ceased being an attorney at the Firm and became the Firm's Director of Legal Recruiting effective November 1, 2005. She was subsequently given the title of DPBD.

9. Alexander and Dunlea began dating in or about 2011 and were married in 2015.

10. As part of his duties and responsibilities, Dunlea was responsible for managing and overseeing the administration of the Firm's wage and salary payment process. That included the payment of compensation to attorneys and staff members.

11. Dunlea was considered a member of the Firm's staff. Generally, staff members

are paid bonuses each year. The amount of the bonus paid to each staff member is set by the Executive Committee each year, generally at the end of the year.

12. During his tenure as the Firm's CFO/COO, Dunlea was responsible for ensuring that bonuses were paid. Generally, the bonuses were paid through the ADP payroll system. As part of that process, the payroll department, under Dunlea's supervision, communicated the amount of each employee's bonus to ADP. The bonus was then deposited into the staff-member's bank account through the direct-deposit service or, if the staff member did not use direct deposit, through the issuance of a bonus check to the staff member.

13. Dunlea received a base salary during the year as well as annual bonuses. Occasionally he was paid small bonuses during the year, but his main bonus was paid at year's end. At that time, the Executive Committee would review Dunlea's compensation history as it understood it to be and decide the amount of his bonus for the specific year based on factors such as work performance and overall Firm performance. The Executive Committee would then communicate the amount of the bonus to Dunlea, who was expected to process the payment of the bonus in the amount specified by the Executive Committee.

14. Instead of processing his year-end bonus in the amount specified by the Executive Committee, Dunlea systematically, surreptitiously, and dishonestly paid himself more than was authorized. Although the Firm's investigation is still continuing, it is clear that Dunlea engaged in these overpayments for at least the twelve-year period from approximately 2011 through his termination in April 2023. The overpayments were substantial, in some years exceeding $200,000. At present, the total amount of Dunlea's overpayments to himself is estimated to be at least $1.6 million.

15. The Firm discovered Dunlea's overpayments on April 11, 2023, and the

Executive Committee confronted him with them. Dunlea confessed to his wrongdoing and apologized for his misconduct. He offered no explanation other than to say that he needed the extra money to meet family obligations. The Firm informed him that he would be fired unless he resigned immediately. Dunlea immediately resigned his employment on April 13, 2023.

16. Dunlea subsequently offered to reimburse the Firm for the money he had stolen. He indicated he wished to resolve the matter privately. Dunlea cashed in his 401(k) plan and wired the Firm approximately $366,000 in partial repayment of the stolen funds. The Firm accepted that payment but informed Dunlea that it expected him to repay the entire amount stolen and was reserving all rights against him. Dunlea has not made any subsequent payments to the Firm.

17. Dunlea's substantial and longstanding pattern of embezzlement, when viewed alongside the couple's lavish lifestyle and matters of which Alexander had notice, led the Firm to believe that Alexander was aware of his misconduct. For example, since 2016, the couple has lived in a million-dollar home they own together in Westfield, New Jersey.

18. For more than a decade, the couple also took expensive vacations together, staying at the finest, most opulent hotels in the world.

19. In light of all these facts and the inferences they supported, the Firm eliminated Alexander's position and offered her a severance package consistent with that offered in other position-elimination scenarios.

20. While Alexander was considering that severance proposal, and given the Firm's reasonable basis to believe that Dunlea and Alexander engaged in misconduct beyond the inflated bonuses Dunlea paid himself, MDMC undertook a review of Dunlea's and Alexander's Firm American Express ("Amex") business card transactions. Charges on those cards were paid

by the Firm. Pursuant to Firm policy, which Dunlea administered and supervised, the Firm business credit cards were to be used for business purposes only. Each month, cardholders received a monthly statement of charges and were expected to provide written details about each charge. The Firm required cardholders to reimburse it for any charges that were personal in nature or were otherwise disallowed.

21. The Firm's review of Dunlea's and Alexander's Firm Amex business-card statements reveal that they both engaged in widespread fraud and theft. Specifically, those statements revealed that Dunlea and Alexander treated themselves to at least 60 vacations at luxury hotels at the Firm's expense, often flying first-class. The trips occurred both before and after they were married. Incredibly, they took more than a dozen trips at Firm expense to the luxury Hotel Coronado in San Diego and racked up total bills of approximately $89,000 at that location alone. The situation was much the same with first-class airfare and stays at other luxury hotels, such as the Savoy in London, the Ritz in Paris, Punta Cana resort in the Caribbean, Caneel Bay in the Virgin Islands, Disney World hotels in Orlando (with Dunlea's children), the Hotel George V in Paris, the Boston Harbor Hotel, the Tampa Waterfront Resort, and various resorts in Ireland and Bermuda. Alexander often posted on Instagram and her blog about the fabulous trips she was enjoying. She did not reveal that the Firm was paying for those trips. Indeed, with a wink to their wanton abuse of MDMC's trust and faith in them, Alexander posted an Instagram photo of Dunlea during one of their trips, reading, "Happy Birthday to my favorite partner in crime." Dunlea and Alexander also used their firm business credit cards to pay for travel for their family members, including Dunlea's mother, brother, children, and ex-wife, and Alexander's brother and sister-in-law.

22. Alexander also appears to have engaged in improper conduct with respect to the

operation of Ivy Alexander, a fashion accessory company she owns. The Firm permitted her to operate that company on her own time provided she did not mix Firm business with her own business. Both Alexander and Dunlea were strongly advised that they must keep this separation, and both promised to do so. But consistent with their pattern of dishonest behavior, they reneged on those promises. Alexander used Firm resources, including the Firm email system and word-processing system, to perform work for her own company. She also engaged in such work during Firm time and used other Firm employees to do so.

23. Dunlea was born in Ireland. In January 2023, he and Alexander threw a lavish 60th birthday party for him in Dublin. Many of the expenses of that trip were charged to the Firm.

24. While the investigation into Dunlea's and Alexander's defalcations is continuing, the total amount of their Firm Amex business-card abuse uncovered to date appears to exceed $1,600,000. Dunlea and Alexander did not reimburse the Firm for any of these personal charges.

25. Dunlea and Alexander currently reside at 710 Woodland Avenue in Westfield, New Jersey. The home has an estimated value of $1.3 million; Dunlea and Alexander have equity of approximately $611,000 in the home. The home was purchased with funds embezzled from the Firm. Dunlea and Alexander also paid the mortgage on the property with funds wrongfully obtained from the Firm. Dunlea and Alexander were therefore unjustly enriched by their wrongful acts, entitling MDMC to the imposition of a constructive trust over that property.

26. Dunlea and Alexander also abused their Firm business-card privileges by placing large Firm expenditures, unrelated to them, on those cards. This had the effect of permitting them to amass substantial and valuable Amex points for their personal use. For example, Alexander had the travel of all persons (attorneys and their family members) to numerous Firm

retreats, as well as the bills for the retreats themselves, placed on her Firm Amex card. Dunlea had major Firm expenses such as the Firm's wireless bills paid through his Firm Amex card. The total amount of these charges is estimated to exceed $500,000. Dunlea had previously been instructed to ensure that the points for such Firm-related expenses be credited to the Firm to be used as a pool of points for travel by members of the Firm. Dunlea ignored this instruction.

27. Dunlea and Alexander also filed joint tax returns, meaning Alexander was on actual notice that Dunlea's reported annual income far exceeded any sum he could possibly have earned as the Firm's CFO/COO.

28. In light of its determination that Alexander was deeply involved in Dunlea's misconduct, the Firm withdrew its offer of a severance package to Alexander. The Firm's investigation into Dunlea's and Alexander's misconduct is continuing. To the extent other instances of misconduct are discovered, they will be included in this litigation.

COUNT ONE
(Breach of Fiduciary Duty/Duty of Loyalty)

29. MDMC repeats and realleges the allegations contained in Paragraphs 1 through 28 of this Complaint as though fully set forth herein.

30. As MDMC's CFO/COO and DPBD, respectively, Dunlea and Alexander each owed the Firm an undivided fiduciary duty, including a duty of loyalty, and were both obligated to act in the best interests of the Firm.

31. The Firm was entitled to place its trust and confidence in Defendants and to expect them to act with the utmost good faith and candor toward it in carrying out their duties as CFO/COO and DPBD, respectively.

32. The Firm relied on Dunlea's and Alexander's loyalty, integrity, and faithful performance of their duties and responsibilities.

33. Dunlea and Alexander each knowingly and willfully breached their fiduciary duty and duty of loyalty to the Firm by their faithless service, which entailed misappropriation of corporate funds, fraud, deception, and violation of Firm policies as described in this Complaint.

34. As a direct and proximate result of Dunlea's and Alexander's breach of their fiduciary duty and duty of loyalty, MDMC suffered harm for which it is entitled to compensatory and punitive damages, equitable relief as described in this Complaint, repayment of the improper expenses charged to the Firm, and disgorgement of all compensation paid to Dunlea and Alexander from the time their faithless service began in 2011 through their terminations by the Firm in April 2023.

COUNT TWO
(Fraud)

35. MDMC repeats and realleges the allegations contained in Paragraphs 1 through 34 of this Complaint as though fully set forth herein.

36. Dunlea and Alexander knowingly and intentionally defrauded MDMC by making numerous material misrepresentations to the Firm since at least 2011, including (a) Dunlea's misrepresentations as to the amount of his compensation authorized by the Executive Committee; and (b) Dunlea's and Alexander's mischaracterization of the personal expenses charged on their Firm Amex cards as legitimate corporate expenses.

37. Those statements were material and were knowingly false and fraudulent when made.

38. Dunlea and Alexander made those false and fraudulent statements (a) with the intent that MDMC would rely on them; and (b) to induce MDMC to continue to employ them as CFO/COO and DPBD, respectively, and to provide them with substantial compensation as a result of their employment.

39. As set forth above, MDMC reasonably relied to its detriment on Dunlea's and Alexander's fraudulent, material misrepresentations in continuing to employ and compensate them.

40. Dunlea's and Alexander's fraudulent, material, false and misleading statements were made intentionally, maliciously and/or with wanton and willful disregard for MDMC's rights and interests.

41. As a direct and proximate result of Dunlea's and Alexander's fraud, MDMC suffered harm for which it is entitled to compensatory and punitive damages, equitable relief as described in this Complaint, repayment of the improper expenses charged to the Firm, and disgorgement of all compensation paid to Dunlea and Alexander from the time their faithless service began in 2011 through their terminations by the Firm in April 2023.

COUNT THREE
(Conversion)

42. MDMC repeats and realleges the allegations contained in Paragraphs 1 through 41 of this Complaint as though fully set forth herein.

43. MDMC has legal ownership and a superior right of possession to the Firm funds that were used to pay Dunlea's unauthorized salary amounts and the unauthorized charges Dunlea and Alexander placed on their Firm business Amex cards. The funds in question are a specific and identifiable amount in excess of $3.2 million.

44. The Firm also has an undivided right to possession of the Firm's confidential and other sensitive information, documentary and otherwise, including but not limited to all emails on or copied from the Firm's computer server and all health and other personal data of Firm employees.

45. Through their deception and improper actions, Dunlea and Alexander exercised

unauthorized dominion over funds that rightfully belonged to MDMC by (a) in Dunlea's case, receiving and retaining compensation to which he was not entitled; and (b) in Dunlea's and Alexander's case, causing the Firm to pay their personal expenses. On information and belief, Dunlea and Alexander also have possession of the Firm's confidential and other sensitive information, documentary and otherwise, including but not limited to emails on or copied from the Firm's computer server and health and other personal data of Firm employees.

46. Dunlea's and Alexander's unlawful possession and use of MDMC's money was to the exclusion of MDMC's rights to those funds. MDMC is not able to access and recoup its funds once it authorizes a payment and pays monies via direct deposit to Dunlea's and Alexander's bank accounts. Nor can MDMC access or recoup funds once they have been paid to a third party. To the extent Dunlea and Alexander have retained any property belonging to the Firm, they are in unlawful possession of that property.

47. As a direct and proximate result of Dunlea's and Alexander's conversion of MDMC's funds, MDMC suffered harm for which it is entitled to compensatory and punitive damages, equitable relief as described in this Complaint, repayment of the improper expenses charged to the Firm, and disgorgement of all compensation paid to Dunlea and Alexander from the time their faithless service began in 2011 through their terminations by the Firm in April 2023.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants jointly and severally as follows:

a. For compensatory, consequential, and punitive damages in an amount to be determined at trial;

b. For equitable disgorgement of Defendants' compensation during the period of their breach of the duty of loyalty from 2011 through the dates of their terminations in April 2023;

c. For a constructive trust over their home at 710 Woodland Avenue, Westfield, New Jersey;

d. For an Order (i) requiring Defendants to return all Plaintiff's property in their possession, documentary and otherwise, including but not limited to (a) any and all financial and business records and data; (b) all emails copied from the Firm's computer server; and (c) all health and other personal data of Firm employees; and (ii) enjoining Defendants from retaining copies of or using any such property and information in any way;

e. For an award of pre-judgment and post-judgment interest, attorneys' fees, and costs of suit; and

f. For such other and further relief as the Court deems equitable and just.

Dated: June 27, 2023

MARINO, TORTORELLA & BOYLE, P.C.

By: ______________________________

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CERTIFICATION PURSUANT TO R. 4:5-1

Plaintiff, McElroy, Deutsch, Mulvaney & Carpenter, LLC, through its undersigned counsel, certifies that to the best of its knowledge, the matter in controversy in this action is not the subject of any other action pending in any court or of a pending arbitration proceeding, that no such action or arbitration proceeding is presently contemplated, and that there are no other parties who should be joined in this action.

Dated: June 27, 2023

MARINO, TORTORELLA & BOYLE, P.C.

By: ______________________

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DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Kevin H. Marino, Esq. is hereby designated as trial counsel for Plaintiff, McElroy, Deutsch, Mulvaney & Carpenter, LLC, in this action.

Dated: June 27, 2023

MARINO, TORTORELLA & BOYLE, P.C.

By: ______________________

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DEMAND FOR TRIAL BY JURY

Plaintiff, McElroy, Deutsch, Mulvaney & Carpenter, LLC, hereby demands a trial by jury as to all issues so triable in this case.

Dated: June 27, 2023

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